

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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ARTEC EUROPE S.À R.L.,	:	1:22-cv-01676-WFK-VMS
	:	
Plaintiff,	:	KICKSTARTER PBC'S
	:	ANSWER TO COMPLAINT,
- against -	:	AFFIRMATIVE DEFENSES,
	:	AND CROSSCLAIM
SHENZEN CREALITY 3D TECHNOLOGY	:	
CO., LTD., and KICKSTARTER PBC,	:	JURY TRIAL DEMANDED
	:	
Defendants.	:	
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Defendant Kickstarter PBC (“Kickstarter”), by and through its undersigned counsel, hereby answers Plaintiff Artec Europe S.À R.L.’s (“Plaintiff’s”) Complaint (the “Complaint”) as follows:

I. AS TO NATURE OF ACTION

1. Kickstarter admits the allegations in Paragraph 1 insofar as the Complaint purports to assert claims for copyright infringement and patent infringement.

II. AS TO THE PARTIES

2. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 2 of the Complaint.

3. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 3 of the Complaint.

4. Kickstarter admits the allegations in Paragraph 4 of the Complaint

5. Kickstarter denies the allegations in Paragraph 5 of the Complaint.

6. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 6 of the Complaint except admits that Paragraph 6 contains a hyperlink to Kickstarter’s website, and a screenshot of what appears to be a historical page on Kickstarter’s website, the contents of which speaks for itself.

III. AS TO JURISDICTION AND VENUE

7. Paragraph 7 of the Complaint contains allegations of law, not fact, to which no response is required.

8. Paragraph 8 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required Kickstarter denies the allegations in Paragraph 8 of the Complaint except admits that it has a principal place of business in this District and transacts business in this District.

9. Paragraph 9 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter admits the allegations in Paragraph 8 of the Complaint.

10. Paragraph 10 contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies the allegations in Paragraph 10 of the Complaint except admits that Kickstarter's principal place of business is located in this District and that Kickstarter transacts business in this District.

11. Kickstarter denies the allegations in Paragraph 11 of the Complaint.

12. Kickstarter denies the allegations in Paragraph 12 of the Complaint except admits that at least some of the backers of Creality's Kickstarter campaign purport to be located in New York.

13. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 13 of the Complaint.

14. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 14 of the Complaint.

15. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 15 of the Complaint.

16. Paragraph 16 contains allegations of law, not fact, to which no response is required. To the extent a response is required Kickstarter denies the allegations in Paragraph 16 of the

Complaint except admits that it has a principal place of business in this District and transacts business in this District.

IV. AS TO FACTUAL BACKGROUND

17. Kickstarter repeats and realleges its responses to the allegations set forth in Paragraphs 1-16 of the Complaint.

18. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 18 of the Complaint.

19. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 19 of the Complaint.

20. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 20 of the Complaint.

21. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 21 of the Complaint.

22. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 22 of the Complaint.

23. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 23 of the Complaint.

24. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 24 of the Complaint.

A. Creality's CR Studio Software infringes Artec's copyright.

25. Kickstarter denies the allegations contained in Paragraph 25 of the Complaint.

26. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 26 of the Complaint.

27. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 27 of the Complaint.

28. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 28 of the Complaint.

29. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 29 of the Complaint.

30. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 30 of the Complaint.

31. Kickstarter denies that there are any exhibits attached to the Complaint and otherwise denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 18 of the Complaint

32. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 32 of the Complaint.

33. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 33 of the Complaint.

34. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 34 of the Complaint.

B. CR-Scan 01 Scanner infringes Artec's '656 Patent.

35. Paragraph 35 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 35 of the Complaint.

36. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 36 of the Complaint.

37. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 37 of the Complaint.

C. Artec contacts Kickstarter to halt Creality Lizard Campaign.

38. Kickstarter denies the allegations in Paragraph 38 of the Complaint.

39. Kickstarter denies the allegations in Paragraph 39 of the Complaint.

40. Kickstarter denies the allegations in Paragraph 40 of the Complaint.

41. Kickstarter denies the allegations in Paragraph 41 of the Complaint and respectfully refers the Court to the document referenced therein for the contents thereof.

42. Kickstarter denies the allegations in Paragraph 42 of the Complaint.

43. Kickstarter denies the allegations in Paragraph 43 of the Complaint, except admits that it did not respond to Artec's letter (which it never received) or request any information concerning the letter.

AS TO CLAIMS FOR RELIEF

V. AS TO COUNT ONE: COPYRIGHT INFRINGEMENT OF SOFTWARE

(Against Defendant Creality)

44. Kickstarter repeats and realleges to the allegations set forth in Paragraphs 1-43 of the Complaint.

45. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 45 of the Complaint.

46. Paragraph 46 contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 46 of the Complaint.

47. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 47 of the Complaint.

48. Paragraph 48 contains allegations of law, not fact, to which no response is required.

49. Paragraph 49 contains allegations of law, not fact, to which no response is required.

50. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 50 of the Complaint.

51. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 51 of the Complaint.

52. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 52 of the Complaint.

53. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 53 of the Complaint.

54. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 54 of the Complaint.

55. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 55 of the Complaint.

56. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 56 of the Complaint except admits that Paragraph 56 of the Complaint purports to include two hyperlinks to electronic files and respectfully refers the Court to those files for the contents thereof.

57. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 57 of the Complaint.

58. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 58 of the Complaint.

59. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 59 of the Complaint.

60. Paragraph 60 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 60 of the Complaint.

61. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 61 of the Complaint.

62. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 62 of the Complaint.

63. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 63 of the Complaint.

64. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 64 of the Complaint.

65. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 65 of the Complaint.

66. Paragraph 66 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 66 of the Complaint.

67. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 67 of the Complaint.

68. Paragraph 68 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 68 of the Complaint.

69. Paragraph 69 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 69 of the Complaint.

VI. AS TO COUNT TWO: CONTRIBUTORY COPYRIGHT INFRINGEMENT

(Against Defendant Kickstarter)

57. Kickstarter repeats and realleges its responses to the allegations set forth in Paragraphs 1-56 of the Complaint.

58. Paragraph 58 of the Complaint contains allegation of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 58 of the Complaint.

59. Kickstarter denies the allegations in Paragraph 59 of the Complaint.

60. Kickstarter denies the allegations in Paragraph 60 of the Complaint.

61. Kickstarter denies the allegations in Paragraph 61 of the Complaint.

62. Kickstarter denies the allegations in Paragraph 62 of the Complaint.

63. Kickstarter denies knowledge or information sufficient to form a basis as to the allegations in Paragraph 63 of the Complaint and respectfully refers the Court to the document referenced therein for the contents thereof.

64. Kickstarter denies the allegations in Paragraph 64 of the Complaint.

65. Kickstarter denies the allegations in Paragraph 65 of the Complaint.

66. Paragraph 66 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies the allegations in Paragraph 66 of the Complaint.

67. Paragraph 67 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies the allegations in Paragraph 67 of the Complaint.

68. Paragraph 68 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies the allegations in Paragraph 68 of the Complaint.

69. Kickstarter admits the allegations in Paragraph 69 of the Complaint.

70. Paragraph 70 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies the allegations in Paragraph 70 of the Complaint.

**VII. AS TO COUNT THREE: INFRINGEMENT OF ARTEC'S '656 PATENT
(Against Defendant Creality)**

71. Kickstarter repeats and realleges its responses to the allegations contained in Paragraphs 1-70 of the Complaint.

72. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 72 of the Complaint.

73. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 73 of the Complaint.

74. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 74 of the Complaint.

75. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 75 of the Complaint.

76. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 76 of the Complaint.

77. Paragraph 77 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 77 of the Complaint.

78. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 78 of the Complaint.

79. Paragraph 79 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 79 of the Complaint.

80. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 80 of the Complaint.

81. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 81 of the Complaint.

VIII. AS TO APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

82. Kickstarter repeats and realleges its responses to the allegations set forth in Paragraphs 1-81 of the Complaint.

83. Paragraph 83 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies the allegations in Paragraph 83 of the Complaint.

84. Kickstarter denies the allegations in Paragraph 84 of the Complaint.

85. Paragraph 85 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent a response is required, Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 85 of the Complaint.

86. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 86 of the Complaint.

87. Kickstarter denies the allegations in Paragraph 87 of the Complaint except admits that – subject to the Court’s ruling in this action – it intends to distribute to Creality funds generated from Creality’s Kickstarter campaign, pursuant to Kickstarter’s Terms of Service.

88. Kickstarter denies the allegations in Paragraph 88 of the Complaint except admits that Creality’s Kickstarter’s campaign ended on March 12, 2022 after raising approximately \$4 million USD and admits that Paragraph 88 of the Complaint accurately quotes Kickstarter policy as stated on Kickstarter’s website.

89. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 89 of the Complaint.

90. Kickstarter denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 90 of the Complaint except denies that it holds the referenced funds in its possession.

91. Kickstarter denies the allegations in Paragraph 91 of the Complaint.

92. Kickstarter admits that Plaintiff has filed a motion seeking the injunctive relief described in Paragraph 92 of the Complaint.

RESPONSE TO THE PRAYER FOR RELIEF

Kickstarter denies that Plaintiff is entitled to any of the relief sought in its Prayer for Relief, including that requested in Paragraphs A through H. Kickstarter is not liable for contributory copyright infringement and Plaintiff is not entitled to recover damages, costs, fees, interest or any other types of recovery from Kickstarter. Plaintiff’s request for injunctive relief is barred by the lack of any irreparable harm to Plaintiff, and because Plaintiff has an adequate remedy at law. The

injunctive relief sought by Plaintiff is further barred because it cannot – as a matter of law – prevail on the merits of its claims.

GENERAL DENIAL

Each numbered paragraph in this Answer responds to the identically numbered paragraph in the Complaint. Kickstarter denies all allegations, declarations, claims, or assertions in the Complaint that are not specifically admitted in this Answer. To the extent the headings contained in the Complaint constitute allegations, such allegations are denied.

AFFIRMATIVE DEFENSES

Kickstarter asserts the following affirmative defenses and reserves the right to amend this answer to assert any additional affirmative defenses when and if, in the course of its investigation, discovery, or preparation for trial, it becomes appropriate to assert such affirmative defenses. In asserting these defenses, Kickstarter does not assume the burden of proof for any issue that would otherwise rest on Plaintiff.

FIRST AFFIRMATIVE DEFENSE (FAILURE TO STATE A CLAIM FOR RELIEF)

The Complaint, and each purported claim for relief therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE (DMCA SAFE HARBORS)

Plaintiff's claims for damages and injunctive relief for copyright infringement are barred by the safe harbors set forth in Section 512(c) of the Digital Millennium Copyright Act, 17 U.S.C. § 512(c).

THIRD AFFIRMATIVE DEFENSE (LACK OF KNOWLEDGE)

Without in any way admitting any infringement, which is denied, Plaintiff's claims are barred in whole or in part because any liability arises from the conduct of parties other than

Kickstarter, and Kickstarter did not have actual or constructive knowledge of the infringing activity alleged in the Complaint.

FOURTH AFFIRMATIVE DEFENSE (NO MATERIAL CONTRIBUTION)

Without in any way admitting any infringement, which is denied, Plaintiff's claims are barred in whole or in part because any liability arises from the conduct of parties other than Kickstarter, and Kickstarter did not induce, cause or materially contribute to the infringing activity alleged in the Complaint.

FIFTH DEFENSE (NO PRIMARY INFRINGEMENT)

Plaintiff's secondary liability claim against Kickstarter is barred because the Complaint fails to allege a single, non-speculative, direct act of infringement that has been induced or facilitated by Kickstarter.

SIXTH DEFENSE (SUBSTANTIAL NON-INFRINGEMENT USE)

Plaintiff's claims are barred in whole or in part by the doctrine of substantial non-infringing use, although Kickstarter submits that Plaintiff bears the burden of proving the doctrine's inapplicability.

SEVENTH DEFENSE (LACK OF VOLITIONAL ACT)

Plaintiff's claims are barred in whole or in part because the alleged infringement was not caused by a volitional act attributable to Kickstarter.

EIGHTH DEFENSE (FIRST AMENDMENT)

Plaintiff's claims are barred in whole or in part to the extent that Kickstarter's actions and speech are protected by the First Amendment of The Constitution of the United States.

NINTH DEFENSE (LACK OF INTENT)

Kickstarter did not act with the requisite degree of intent or fault.

TENTH DEFENSE (LACK OF WILLFULNESS)

Kickstarter's actions were not willful

ELEVENTH DEFENSE (GOOD FAITH)

Plaintiff's claims are barred in whole or in part because Kickstarter's conduct was reasonable, justified and in good faith.

TWLEVTH AFFIRMATIVE DEFENSE (INDEMNIFICATION)

Without in any way admitting any infringement or liability, which is denied, to the extent that Kickstarter is found liable, one or more Defendants and/or third parties are liable for the conduct alleged and will be required to answer and indemnify.

THIRTEENTH AFFIRMATIVE DEFENSE (NO PROTECTION FOR WORKS IN THE PUBLIC DOMAIN)

The software purportedly owned by Plaintiff is not subject to protection under the Copyright Act because it contains elements taken from the public domain.

FOURTEENTH AFFIRMATIVE DEFENSE (MERGER DOCTRINE)

Plaintiff's claims are barred in whole or in part by merger doctrine.

FIFTEENTH DEFENSE (FAIR USE)

Plaintiff's claims are barred in whole or in part by the doctrine of fair use.

SIXTEENTH DEFENSE (COPYRIGHT MISUSE)

Plaintiff's claims are barred in whole or in part by the doctrine of copyright misuse.

SEVENTEENTH DEFENSE (ESTOPPEL)

Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

EIGHTEENTH DEFENSE (WAIVER)

Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

NINETEENTH DEFENSE (UNCLEAN HANDS)

Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

TWENTIETH DEFENSE (LACHES)

Plaintiff's claims are barred in whole or in part by the doctrine of laches.

TWENTY-FIRST DEFENSE (NO STANDING)

Plaintiff has failed to establish that it possesses an ownership interest in the Artec Software sufficient to confer standing to bring this action.

TWENTY-SECOND AFFIRMATIVE DEFENSE (INNOCENT INTENT)

Without in any way admitting any infringement, which is denied, Plaintiff's damages, if any, are limited because the alleged infringement was innocent.

TWENTY-THIRD AFFIRMATIVE DEFENSE (INJURY CAUSED BY OTHERS)

Plaintiff's alleged damages, if any, are the sole and direct result of forces, acts and omissions independent of Kickstarter, and were not proximately caused by Kickstarter.

TWENTY-FOURTH DEFENSE (FAILURE TO MITIGATE)

Plaintiff's claims are barred in whole or in part because Plaintiff has failed to mitigate its damages, if any.

TWENTY-FIFTH DEFENSE (NO DAMAGES)

Plaintiff did not incur any damages or loss as a result of any act or conduct by Kickstarter.

TWENTY-SIXTH DEFENSE (SPECULATIVE DAMAGES)

Plaintiff has suffered no damage as a result of the acts alleged to have been committed and any damages alleged are too speculative and imprecise.

CROSS-CLAIM FOR INDEMNIFICATION

1. Pursuant to Section 15 of Kickstarter's Terms of Service, Defendant Shenzen Creality 3D Technology Co., Ltd. ("Creality") agreed to indemnify and hold harmless Kickstarter from all liabilities, claims, and expenses (including reasonable attorneys' fees and other legal costs) that arise from Creality's use or misuse of Kickstarter.

2. If Creality sustains injuries and damages, and it is found that Kickstarter is liable to Plaintiff, then Kickstarter shall be indemnified and made whole by Creality for any damages awarded against Kickstarter and/or defense costs (including reasonable attorneys' fees) incurred by Kickstarter as a result of this action.

RELIEF REQUESTED

WHEREFORE, Kickstarter respectfully demands judgement:

- (a) dismissing the Complaint as to Kickstarter;
- (b) directing pursuant to 17 U.S.C. § 505 that Plaintiff pay to Kickstarter the costs of this action and reasonable attorneys' fees to be allowed to Kickstarter by the Court;
- (c) directing that Creality indemnify Kickstarter for any damages awarded against Kickstarter and/or defense costs (including reasonable attorneys' fees) incurred by Kickstarter as a result of this action (to the extent such costs and fees are not ordered to be paid by Plaintiff pursuant to 17 U.S.C. § 505); and

(d) granting such other and further relief as this Court deems just and proper.

Dated: May 2, 2022

Respectfully submitted,
DAVIS WRIGHT TREMAINE LLP

By: /s/ James Rosenfeld

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